

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JOSEPH BRADDOCK,

Plaintiff,

v.

Civil Action No. 1:07cv45

WARDEN ED WENSELL,

Defendant.

**ORDER AFFIRMING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION AND DISMISSING WITHOUT PREJUDICE**

The pro se plaintiff initiated this case on March 29, 2007, by filing a civil rights complaint. On that same date, the Clerk sent the plaintiff a Notice of Deficient Pleading advising him that he must either pay the \$350.00 filing fee or file an application to proceed without prepayment of fees and forms in support of that request. The required application forms were sent to the plaintiff with the notice that advised him that the failure to comply within 30 days would result in the dismissal of the case. On May 8, 2007, United States Magistrate Judge James E. Seibert issued a Show Cause Order because the plaintiff had failed to comply with the deficiency notice. The plaintiff was given ten (10) days to show cause why his case should not be dismissed. On May 17, 2007, Magistrate Judge Seibert issued an Order granting the plaintiff an additional ten (10) days to show cause why his case should not be dismissed. The plaintiff never responded to these two orders, or

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paid the filing fee, or filed an application to proceed without prepayment of fees.

On June 8, 2007, Magistrate Judge Seibert entered a Report and Recommendation ("R&R") recommending that this case be dismissed without prejudice for failure to prosecute. In the R&R, he provided the plaintiff with ten (10) days in which to file objections to his report, noting that the failure to file timely objections would waive plaintiff's right to appeal the Court's judgment. The plaintiff never filed any objections.

Accordingly, this Court hereby **ACCEPTS** the Magistrate Judge's Report and Recommendation in whole and **DISMISSES** this case **WITHOUT PREJUDICE**. The Clerk is ordered to **STRIKE** this case from this Court's docket.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Dismissal Order to the *pro se* plaintiff, certified mail, return receipt requested.

DATED: October 1, 2007

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE